IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929

WP(C).No. 34552 of 2004(L)

PETITIONER:

RAJEEV, S/O. P.K. BALAKRISHNAN,
PUNATHIL HOUSE, EZHAKKAD, PALAKKAD TALUK.

BY ADV. SRI.T.C.MOHANDAS

RESPONDENTS:

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1. V. HYDER, S/O. VEERANKUTTY,
VATTAPPARAMBIL, MANKARA AMSOM,
PALAKKAD TALUK.

2. C.M. MOOSA, MALAYANKULATHI HOUSE,
EZHAKKAD, PALAKKAD.

3. SATHYABHAMA, W/O. P.K. BALAKRISHNAN,
NOCHULLI, ERAMANGALAM, PALAKKAD.

4. P.K. BALAKRISHNAN, S/O. KUNJANDU,
ERAMANGALAM, NOCHULLI, KOYALMANNAM, PALAKKAD.

BY ADV. SRI.P.K.JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE ORDER DT.31.8.88 IN OP NO.35/88 OF THE DISTRICT COURT, PALAKKAD.

EXT.P2 : TRUE COPY OF THE RELEVANT PAGE OF S.S.L.C BOOK SHOWING THE DATE OF BIRTH OF THE PETITIONER.

EXT.P3 : TRUE COPY OF THE ORDER DT.5.9.2000 IN IA NO.874/94 IN OP NO.35/88 OF THE DISTRICT COURT, PALAKKAD.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 34552 OF 2004

Dated this the 15th day of June, 2007

JUDGMENT

Ext.P3 order passed by the learned District Judge on an interlocutory application filed by the 1st respondent in an original petition filed by the mother of the petitioner under Section 8(2) of the Hindu Minority and Guardianship Act is under challenge. The original petition filed by the mother of the petitioner was allowed by the District Judge on 31.08.98 by Ext.P1 order. Under Ext.P1 the court granted permission to the mother of the petitioner to sell property belonging to the petitioner who then was a minor aged 16 years on condition that the property covered by Ext.A2 agreement will be assigned to the minor. The court below also directed that after assignment the petitioner's mother shall produce the title document before the court. On the strength of Ext.P1 the property belonging to the petitioner was sold to the petitioner in the IA who was the first respondent in the original petition. But the petitioner in the original petition did not produce original of the title document relating to property mentioned as Ext.A2 in Ext.P1. The petitioner attained majority on 18.02.2000 and filed a suit against the 1st respondent in the original petition for setting aside the document in favour of the 1st respondent. In that suit the 1st respondent contended

that the document in his favour has been executed on the strength of Exts.P1 and P3. According to the petitioner he who was a minor all through, came to have information regarding Exts.P1 and P3 only when the written statement was filed in the suit filed by him. In this writ petition the petitioner seeks quashment of Exts.P1 and P3 on various grounds.

Heard Sri.T.C.Mohandas, Learned counsel for the petitioner. Even though several submissions were urged before me by the learned counsel, I am not inclined to interfere with Ext.P1 since admittedly on the date of Ext.P1, the petitioner was a minor and the petitioner's mother could have maintained an application under Hindu Minority and Guardianship Act for sale of property in Ext.P1. I notice that the interest of the minor has been take care of by the learned District Judge. But I find some merit in the submission of the learned counsel for the petitioner that the petitioner was entitled for notice regarding IA No.874 of 2004. Though that IA was filed in 1994, when the petitioner was till a minor, it was kept pending till 05.09.2000. As already indicated the petitioner has attained majority on 18.02.2000. Under these circumstances I set aside Ext.P3 and direct the learned District Judge to take fresh decision in the IA with notice to the petitioner and all the four respondents in this Writ Petition namely Sri. Hyder. petitioner in the IA,

the parents of the petitioner herein and also Sri.C.M.Moosa the original owner of the property which was purchased in the name of the petitioner in substitution of the property covered by Ext.A2 made mention of in Ext.P1. In order to enable the District Judge to do that, I suo motu implead the petitioner Rajeev, S/o. P.K. Balakrishnan, Punathil House, Ezhakkad, Palakkad Taluk as additional respondent No.3 in the IA. The office of the District Court, Palakkad will carry out corrections in IA No.874 of 1994 within three weeks of receiving copy of this judgment. I make it clear that I have not expressed any opinion on the view of the learned District Judge that the interest of the minor has been taken care of by the purchase of the property covered by document No.2482/88. Ext.P3 is being interfered with only on the technical ground that the petitioner was a necessary party and was entitled to be heard since the petitioner had attained majority on the date of passage of Ext.P3.

PIUS C. KURIAKOSE, JUDGE

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